

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: <u>9/27/2021</u>

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ELVIS MARTINEZ *et ano.*,

Plaintiffs,

-v-

AVALANCHE CONSTRUCTION GROUP
INC. *et al.*,

Defendants.
-----X

ORDER

20-CV-11065 (JLC)

JAMES L. COTT, United States Magistrate Judge.

WHEREAS, the docket indicates in a final report of the mediator on August 25, 2021 that a mediation in this case was not held because the parties had reached a settlement on all issues (Dkt. No. 33); and

WHEREAS, the parties have now agreed to consent to my jurisdiction over this case under 28 U.S.C. § 636(c) for all purposes, presumably so that their settlement agreement may be reviewed by me (Dkt. No. 36);

IT IS HEREBY ORDERED that the parties are directed to file a joint letter motion along with their settlement agreement **no later than October 27, 2021** to request court approval. The letter motion should explain why the proposed settlement is fair and reasonable and otherwise complies with the Second Circuit's decision in *Cheeks v. Freeport Pancake House, Inc.*, 796 F.3d 199 (2d Cir. 2015). The parties are directed to this Court's rulings in *Cruz v. Relay Delivery, Inc.*, 17-CV-7475 (JLC), 2018 WL 4203720 (S.D.N.Y. Sept. 4, 2018) ("no reemployment" provision impermissible and provision related to communication with media should not be overly restrictive); *Rivera v. Relay Delivery, Inc.*, 17-CV-5012 (JLC), 2018 WL

1989618 (S.D.N.Y. Apr. 26, 2018) (release that was broader and thus more favorable to defendants than plaintiff's narrower release was impermissible); *Howard v. Don Coleman Advertising, Inc.*, 16-CV-5060 (JLC), 2017 WL 773695 (S.D.N.Y. Feb. 28, 2017) (any mutual non-disparagement provision must include carve-out for truthfulness); and *Souza v. 65 St. Marks Bistro*, 15-CV-327 (JLC), 2015 WL 7271747 (S.D.N.Y. Nov. 6, 2015) (regarding impermissible confidentiality provisions and the proper scope of mutual general releases), for further guidance as to permissible and impermissible terms.

For recent settlement papers that the Court has approved, the parties are directed to the following cases, as examples: *Rodriguez v. Emenike*, No. 18-CV-5786 (Dkt. Nos. 36, 38 (settlement agreement); Dkt. No. 37 (court approval order)); *Yahuiti v. L Ray LLC*, No. 19-CV-1114 (Dkt. No. 24 (settlement agreement); Dkt. No. 25 (court approval order)); *De Luna Hernandez v. City Catering*, No. 18-CV-3919 (Dkt. No. 49 (settlement agreement); Dkt. No. 50 (court approval order)); and *Sanchez v. New York Kimchi Catering Corp.*, No. 16-7784 (Dkt. No. 98 (settlement agreement) and Dkt. No. 99 (court approval order).

Should the parties not have settled, they should so advise the Court by letter no later than **October 1, 2021**, after which time the Court will schedule a conference to chart the further course of the case.

SO ORDERED.

Dated: September 27, 2021
New York, New York



JAMES L. COTT
United States Magistrate Judge